IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

OSA No. 9 of 2001.

Reserved on: 10.4.2007

Date of decision: 13.4.2007

Capt. Padam Singh ... Appellant

Versus

Ms. Rajni Sarin and Anr. … Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. C.B. Singh, Advocate.

For the respondents: Mr. K.D. Sood with Mr. B.K. Sood, Advocates.

Per V.K. Ahuja, J.:

This is an appeal filed by the appellant against the judgment and decree of the learned Single Judge dated 14.7.2000, vide which the suit filed by the respondents for recovery of Rs.5,94,000/- alongwith costs and interest was decreed.

Briefly stated the facts of the case are that respondents as plaintiffs filed a suit for recovery of Rs.5,94,000/- alleging that the plaintiffs are shareholders and directors in a private company known as 'Distant Frontiers Tours and Travels Pvt. Ltd. The defendant was also a shareholder and director of the company and he decided to part ways with them. During the period of his association with the plaintiffs, the

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

defendant took a loan from the plaintiffs amounting to Rs.5,50,000/- carrying interest at the rate of 12% per annum. On 19.1.1997, the defendant executed a Pledge Note in favour of the plaintiffs pledging two properties detailed in the plaint to secure the above loan and interest accrued thereon. The plaintiffs alleged that the defendant refused to pay the amount and they are entitled to principal amount along with interest at the rate of 12% from 19.1.1997 to September, 1997 amounting to Rs.44,000/-.

Defendant admitted that the plaintiffs were shareholders and directors of the company and he was also shareholder and director and he parted ways with the plaintiffs. He denied having taken any loan from the plaintiffs but took up the plea that the plaintiffs taking undue advantage of the blank papers which were in their custody forged the documents. He also denied having executed any Pledge Note in favour of the plaintiffs which was alleged to be a forged document. However, he admitted that he was owner in possession of the land detailed in the plaint. He also took up the plea that no consideration moved and as such, the defendant was not liable to pay the amount.

On the pleadings of the parties, the following issues were settled on 30.12.1998 by the Hon'ble Single Judge:

1. Whether the defendant had taken a loan of Rs.5,50,000/- from the plaintiffs as alleged? OPP

2. Whether pledge note dated 19.1.1997 was executed by the defendant in favour of the plaintiffs, if so, to what effect? OPP

3. Whether the signatures of the defendant were obtained on blank papers, as alleged? OPD

4. If issue No.1 is decided in the affirmative, to what rate of interest are the plaintiffs entitled on the loan amount? OPP

5. To what amount, if any, towards principal and interest are the plaintiffs entitled to? OPP

6. Relief.

Parties led their evidence and the learned Single Judge vide his impugned judgment decided all the issues in favour of the plaintiffs and as against the defendant and decreed the suit of the plaintiffs in full.

We have heard the learned counsel for the parties and have gone through the record of the case.

The submissions made by the learned counsel for the appellant were on two grounds firstly that the plaintiffs had failed to prove that the money had changed the hands at the time of execution of the Pledge Note. Secondly, the Pledge Note was unregistered one and the plaintiffs had not examined the witnesses to prove the payment of the money to the defendant by way of cheques, bank drafts or in cash, except the statements of two plaintiffs which cannot be relied upon in the absence of other corroborative evidence. It was also submitted that there are no signatures of the two witnesses to the Pledge Note and in the absence of the witnesses, the said Pledge Note is not admissible in evidence.

On the other hand, the learned counsel for the respondents had supported the impugned judgment for the reasons given therein supplementing it by the submission that the defendant had not denied his signatures on the Pledge Note and there was an admission about the consideration having passed in the past. It was also submitted that no plea was taken that the Pledge Note was unregistered or it was not

signed by two witnesses and as to the effect. It was also submitted that since the respondents/plaintiffs had not specifically disputed the execution of the Pledge Note or the admission about the passed consideration, it was not necessary for the plaintiffs to have proved the payment by cheques or by draft and led evidence in that regard.

On the arguments advanced by the learned counsel for the parties, the following points arise for determination:

1. Whether the findings of the learned Single Judge are sustainable in the eyes of law?
2. Final order.

Point-wise findings are given as under:

1. Point No. 1: Yes.
2. Point No. 2: Appeal dismissed as per operative part of the judgment.

Point No. 1:

From a perusal of the pleadings of the plaintiff, it is clear that the plaintiffs specifically alleged in the plaint that the defendant took loan during the period of their association with the plaintiffs amounting to Rs.5,50,000/- carrying interest at the rate of 12%. It was also submitted that the defendant had executed a Pledge Note in favour of the plaintiffs pledging two properties detailed in the plaint. The defendants in his written statement admitted his association with the plaintiffs but simply denied having taken any loan from the plaintiffs. He also denied having executed the Pledge Note by pleading that it was a forged document. The defendant nowhere specifically pleaded in the written statement that he could not reply to the allegations made in regard to taking of loan by him in the absence of the details or the particulars along with the dates etc. The defendant never filed any application under Order 6 Rule 4 C.P.C. seeking better particulars from

the plaintiffs about the loan advanced in his favour. The defendant took up the plea simply that no such document was executed by him but never pleaded specifically that no consideration had passed at the time of execution of the document or he never admitted about the past consideration at the time of execution of the document. The defendant is taking up the plea that the blank papers were lying with the plaintiffs who took undue advantage of the same, but surprisingly the document in question proved in evidence as Pledge Note Ext.PW1/A is in the hands of the defendant as per the evidence.

Coming to the evidence in this regard, the plaintiffs to prove their case had examined both the plaintiffs PW1 Ms. Rajni Sarin and PW-2 Smt. Roma Satara, plaintiff No.2, who substantiated the allegations made in the plaint in regard to taking of loan by the defendant and execution of the Pledge Note Ext. PW1/A. The mere fact that they came up with the plea that out of the amount Rs.2,75,000/- was contributed by each of the plaintiffs is not sufficient to hold that their statements cannot be relied upon, since the defendant never sought better particulars of the amount advanced and as to by whom and when it was advanced. There were no specific suggestions to either of the two plaintiffs that no amount was taken as loan by the defendant nor he admitted at the time of execution of the Pledge Note Ext. PW1/A that no consideration passed at any time. In my opinion, the statements of both the PWs rather go unrebutted since there were no specific suggestions to them that no money was advanced by them or that the defendant never admitted about the past consideration at the time of the execution of the Pledge Deed. A perusal of the statement shows that rather the defendant had come up with a suggestion that Rupees One Lac were paid to one Chergu Ram on behalf of the company which plea

was never taken by the defendant in his written statement no substantiated that he paid this amount to said Chergu Ram on behalf of the company.

Apart from the above, the defendant was also examined as DW1 who simply denied that he did not secure any loan from the plaintiffs nor pledged the land owned and possessed by him. However, he admitted having executed document Ext. PW1/A. He denies the suggestion that Ext. PW1/A was in his hand, though he admitted his signatures thereon, but according to the statement of PW-1 Ms. Rajni Sarin, Ext. PW1/A is in the hand of and signed by the defendant and there were no suggestions to her that she has deposed falsely in this regard or it was not in the hand of the defendant. The defendant never applied for comparison of his handwriting to prove that this document was not in his handwriting and, therefore, his statement cannot be relied upon. From the perusal of the statement of DW-1, it is clear that he has not made out any case that the amount was never received by him or that he never executed the Pledge Note. He also examined DW-2 Dvarshi Thapa whose statement does not substantiate the case of the defendant in any manner.

Coming to the plea that this Pledge Note does not bear the signatures of the attesting witness, no such law has been shown to us that such Pledge Note is required to be attested by two witnesses as in the case of a Will. Therefore, the document in question can be read in evidence. No plea was taken that this Pledge Note was unregistered or as to its effect and, therefore, no findings were given by the learned Single Judge that the document was unregistered and as to what was the effect of the non-registration. To substantiate this point, the

learned counsel for the appellant has relied upon the following decision:-

The decision in **United Bank of India Ltd.** Vs. **Messrs Lekharam Sonaram and Co. and others**, **AIR 1965 Supreme Court 1591,** shows that there was a mortgage by deposit of title deeds. Their Lordships were considering the question as to whether the registration is required or not. It was held that the document which constitutes the bargain regarding security requires registration under Section 17 of the Indian Registration Act, 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. If a document of this character is not registered it cannot be used in evidence at all and the transaction itself cannot be proved by oral evidence either.

The decision in **Rachpal Mahraj** Vs. **Bhagwandas Daruka and others**, **AIR (37) 1950 Supreme Court 272**, shows that there was a mortgage of deposit of title deed memorandum given along with the title deeds. When the debtor deposits with the creditor the title deeds of his property with intent to create a security, the law implies a contract between the parties to create a mortgage, and no registered instrument is required under S. 59 as in other forms of mortgage. But if the parties choose to reduce the contract to writing, the implication is excluded by their express bargain, and the document will be sole evidence of its terms. In such a case the deposit and the document both form integral part of the transaction and are essential ingredients in the creation of the mortgage. As the deposit alone is not intended to create the charge and the document which constitutes the bargain regarding the security, is also necessary and operates to create the charge in conjunction with the deposit, it requires

registration under S. 17, Registration Act, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. The time factor is not decisive. The document may be handed over to the creditor along with the title deeds and yet not be registrable or it may be delivered at a later date and nevertheless be s registrable. It was finally held in para-3 and 6 that the memorandum did not require registration.

In the present case, no immovable property was mortgaged in pursuance of this document and only a Pledge Note was written as security for the amount taken as loan by the defendant on some previous dates. Therefore, the document in question did not require registration and as such, the submissions made by the learned counsel for the appellant falls squarely on the ground.

Point No. 2:

On a perusal of the record of the case, it is clear that the learned Single Judge had given correct findings after perusal of the evidence and those findings do not call for an interference by this Court and as such are liable to be affirmed and are affirmed accordingly. There is no merit in the appeal filed by the appellant, which is dismissed accordingly along with costs including the lawyer's fees as per rules.

(V.K. Ahuja),
Judge

(Kuldip Singh),
Judge

April 13, 2007
(BSS)